

**CERTIFIED FOR PARTIAL PUBLICATION\***

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re S. W. et al., Persons Coming Under the  
Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

KRISTINA W.,

Defendant and Appellant.

F051032

(Super. Ct. No. BJP015494 &  
BJP015495)

**OPINION**

APPEAL from a judgment of the Superior Court of Madera County. Nancy G. Staggs, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

David A. Prentice, County Counsel, and Miranda P. Neal, Deputy County Counsel, for Plaintiff and Respondent.

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\* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of Discussion parts II, III and IV.

Kristina W. appeals from the order terminating her parental rights to her two daughters, S. (born Nov. 1999) and K. (born May 2001). She claims the juvenile court did not have subject matter jurisdiction to terminate her parental rights. If the court did have jurisdiction, then she argues substantial evidence did not support the finding that S. and K. were adoptable, the court erred in terminating parental rights without receiving information from S. and K. concerning their feelings about the proposed adoption, and Kristina's regular visitation demonstrated a substantial benefit to S. and K. precluding an order terminating parental rights. We disagree with each of her contentions and affirm the judgment, publishing our discussion on subject matter jurisdiction.

### **FACTS AND PROCEEDINGS**

On November 15, 2004, a Madera police officer was dispatched to a report of two children living in an unsafe environment. The officer contacted the owner of the home, Julia V. Julia stated that Kristina slept in a van parked on the curb in front of her house with Julia's son, Sam V. The van was not in working order and was used for sleeping. The van had no license plates and the registration had been expired for over six months.

Julia said that Sam, Kristina and the children arrived at her home several months ago. The children slept in the house, while Kristina and Sam "stayed and lived out of the van." Sam had recently been picked up on a parole violation. Kristina remained in the van while Sam was in prison for his parole violation. Julia bought food and clothes for the children. Julia allowed the children to sleep in her house. She was sure that Sam and Kristina were using illegal drugs.

Sam's sister, Pearl, said that Kristina and Sam moved into the van in front of the house. Neither of them contributed to anything needed or used by the children. Pearl reported that Sam beats Kristina, but she will not leave him even though she has had plenty of opportunities to do so.

The officer contacted Sam. He was evasive about the children and about their mother, Kristina. He left.

Kristina arrived home shortly thereafter. Kristina told the officer that she lives in the van with Sam because she did not have money for anything else. She admitted that she was currently using heroin and had used the previous night. She said her children sleep in the house and were allowed to bathe and eat in the house. She currently had an application in to Madera County for welfare so she could provide for her children. She stated that she has tried to leave Sam but he beats her and she is afraid to leave him.

When asked by the responding social worker about prior child welfare history, Kristina reported that she was receiving voluntary family maintenance services through social services in Nebraska.

Kristina reported that she and Sam had been living in Nebraska, but Sam had to return to California as a parolee at large. She traveled in her van with her children and joined Sam in California.<sup>1</sup>

Kristina was asked to provide personal items for the children before the van was towed. The van was in deplorable condition. It was filthy and littered with soiled clothing and used food and beverage containers. A strong stench of urine emanated from the van. There were no beds, bathroom or kitchen in the van.

The department took the children into protective custody and placed them in foster care. The juvenile court ordered them detained pursuant to a dependency petition and adjudged them dependents of the court. (Welf. & Inst. Code, § 300, subd. (b).) The children have different fathers. Kristina did not know where the fathers were. The department conducted due diligence searches for the fathers but could not locate them.

In the report prepared for the detention hearing, the social worker stated that she had contacted the Nebraska social worker, who confirmed that Kristina had a substantiated

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<sup>1</sup> We note that Kristina's report that she arrived in California after Sam arrived differs from Julia's report that Kristina, Sam, and the two girls arrived together.

referral dated September 9, 2004, and has had other referrals regarding neglect, drug use, evictions and domestic violence.

A report was prepared for the disposition hearing. Kristina reported to the social worker that she was born in Nebraska and that is where her family lives. She met Sam four years earlier and they began a relationship. Sam is physically abusive to her but treats her children "real good." Kristina expressed her desire to the social worker to move to Nebraska or else she will be unable to keep herself from reuniting with Sam after he is released from prison in a couple of weeks.

Kristina received from her father a bus ticket to Nebraska for January 8, 2005. Kristina had warrants out for her arrest in Nebraska and she wished to return to serve her time so she would be available to care for her children. Kristina stated that she felt that being in Nebraska with her family support would help her to gain and maintain sobriety so she could provide for her children.

Kristina disclosed to the social worker that she left Nebraska because child welfare services in Nebraska had conducted a hair follicle test and she knew the test result would be dirty. She was afraid they would take her children away so she packed up the van and drove to California to join Sam.

On January 7, 2005, the court conducted an uncontested dispositional hearing. The court assumed dependency jurisdiction and ordered Kristina to complete programs in parenting and domestic violence, complete a psychological evaluation and a substance abuse assessment, follow any recommended treatment and submit to random drug testing.

The day after the disposition hearing, Kristina traveled to Nebraska. She was incarcerated from January 19, 2005 to February 24, 2005. During her time in Nebraska her compliance with her case plan was minimal. She returned to California in April 2005 and visited with her children while she was here.

The department recommended that services be continued for an additional six months. The department recommended against placing the children with Kristina's brother

and sister-in-law. The court adopted the department's recommendation and ordered another six months of services.

At the 12-month status review the department recommended that family reunification services be terminated and the matter be set for permanency planning. The department noted that Kristina had made some progress in her case plan, but had only begun her substance abuse counseling.

Kristina contested the department's recommendation at the February 3, 2006 12-month review hearing. The court found it would be detrimental to return the children to Kristina's custody. It also found that she was provided reasonable services but failed to make significant progress in resolving the problems requiring the children's removal. The court terminated Kristina's reunification services and set a Welfare and Institutions Code section 366.26 hearing.

Kristina filed a petition seeking writ review from the order terminating reunification services and the setting of a Welfare and Institutions Code section 366.26 hearing. We denied her petition on May 8, 2006 in case No. F049843.

A report was prepared for the permanency planning hearing. S. was described as a six-and-a-half-year-old child with developmental delays. It is suspected that she suffers from the same genetic condition Kristina suffers from, Noonan's Syndrome. She is significantly behind her peers in school. Although S. is behind her peers, she has shown steady progress and her classroom behavior is excellent. She is friendly and helpful in class. She does not appear to be suffering from any form of childhood mental illness and presents as a polite, well-adjusted child. S. has a urinary problem that will require routine surgery.

K. was described as a physically healthy five-year-old. She is developmentally on target. She is an intelligent and active child who is cooperative with adults and presents no behavioral problems.

Because Kristina moved to Nebraska, she had not maintained regular face-to-face visitation with the children, but she did maintain regular contact by telephone. The children

recognized Kristina as their mother, but the parent-child relationship had weakened over the past 18 months. The social worker found that the children would not be greatly harmed if the weak parent-child relationship was severed. The worker believed that the children would clearly benefit from a plan of adoption and were an adoptable sibling pair. At the time the initial report was written, the girls had attended an adoption picnic in May of 2006 and three families expressed interest in adopting them. Later in May a specific adoptive family had been selected. The adoptive family was well aware of Samantha's health issues and developmental challenges.

K. and S. had a day visit with their prospective adoptive parent, followed by an overnight visit. They were placed in the foster-adopt home on June 17, 2006 and were doing well in their placement at the time the June 21, 2006 review report was written.

The contested Welfare and Institutions Code section 366.26 hearing was held on July 12, 2006. At the outset of the hearing, counsel for Kristina raised the issue of jurisdiction. She argued that Kristina only had been in California a few months, she was homeless, she did not have a bank account, she did not have a home, and she had told the social worker that she wanted to return to Nebraska. The court disagreed and said that at the time jurisdiction was exercised everyone in this case was residing in Madera. The court and counsel continued to discuss the question of jurisdiction with the court ending the conversation by stating it could not do anything about it now. The court told counsel for Kristina that she could raise a formal motion regarding jurisdiction if she so desired.

Counsel for Kristina then argued that there was not sufficient evidence to show that the girls are adoptable. She argued that there was not a bonding study. The court found that the children were adoptable and terminated the rights of Kristina and the fathers of the girls.

## **DISCUSSION**

### **I. Subject Matter Jurisdiction**

“‘Lack of jurisdiction’ is a term used to describe situations in which a court is without authority to act. [Citation.] The Uniform Child Custody Jurisdiction and

Enforcement Act (the Act) (Fam. Code, § 3400 et seq.) is the exclusive method for determining subject matter jurisdiction for custody proceedings in California, and its provisions apply to juvenile dependency proceedings. [Citations.]” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 245.)

“[S]ubject matter jurisdiction either exists or does not exist at the time the action is commenced.” (*Plas v. Superior Court* (1984) 155 Cal.App.3d 1008, 1015, fn. 5.) A proceeding is commenced the date the action is filed. (*In re Janette H.* (1987) 196 Cal.App.3d 1421, 1429.) “We are not bound by the juvenile court’s findings regarding subject matter jurisdiction, but rather ‘independently reweigh the jurisdictional facts.’ [Citation.]” (*In re A.C.* (2005) 130 Cal.App.4th 854, 860.) Subject matter jurisdiction “cannot be conferred by stipulation, consent, waiver, or estoppel [citations].” (*Ibid.*)

Kristina contends that she and her daughters are Nebraskans unjustly trapped in the California dependency system. She argues that California was neither her home state nor the home state of the children at the commencement of the proceedings. Appellate counsel for Kristina argues that they were merely visiting California when the children were detained. Because they were only visiting, Nebraska is their home state under Family Code sections 3402, subdivision (g) and 3421, subdivision (a)(1).<sup>2</sup> At most, Kristina argues, California had only temporary emergency jurisdiction under section 3424. In addition, Kristina contends the trial court abused its discretion by not staying the proceedings on grounds of inconvenient forum.

Kristina argues that Nebraska is the state with subject matter jurisdiction under section 3421, subdivision (a)(1). It provides: “Except as otherwise provided in Section 3424 [temporary emergency jurisdiction], a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: [¶] (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the

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<sup>2</sup> Unless otherwise noted, all future code references are to the Family Code.

home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.”

For purposes of the act, “[h]ome state’ means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.... A period of temporary absence of any of the mentioned persons is part of the period.” (§ 3402, subd. (g).)

Sam’s mother said that Kristina and the children had been at her home for several months. Kristina and Sam “lived” out of the van. Even though Sam had been in prison for a parole violation while Kristina was in California, she continued to live in the van. Sam’s sister said that Kristina and Sam “moved into” the van. Kristina has not left Sam even though she has had opportunities to do so. Kristina told the responding officer that she “lives” in the van. She has applied for welfare in Madera County. Kristina left Nebraska to come to California with Sam because he had to return to California. There was nothing in this evidence that suggested that Kristina was on a temporary visit of some sort. She came to California to be with Sam. She remained in California, even though she had opportunities to leave. She sought welfare in California. All of this establishes that Kristina and the children were living in California. The fact that Kristina chose to live in a van rather than a typical residence demonstrates her unstable and unsuitable lifestyle; it does not demonstrate that her residence was somewhere other than in California at the time the proceedings were commenced.

Because this evidence established that Kristina and the children were living in California, as opposed to visiting, at the time of the commencement of the proceeding Nebraska cannot be the “home state” under section 3402, subdivision (g) and thus jurisdiction was not established in Nebraska under section 3421, subdivision (a)(1).

Kristina’s argument that the trial court did not have subject matter jurisdiction because Nebraska was her home state at the commencement of the proceeding fails.



Because this argument fails, we need not discuss whether California would have had continuing subject matter jurisdiction under the emergency provisions of section 3424, subdivision (b).

Kristina goes on to argue that even if jurisdiction were proper in this case, the court should have declined to exercise that jurisdiction because California was an inconvenient forum and Nebraska was the more appropriate forum. Kristina claims that all of the factors utilized to determine the correct forum weighed heavily in favor of Nebraska and it was an abuse of discretion to ignore these factors. Kristina makes this argument even though the issue of inconvenient forum was not raised below.

Section 3427, subdivision (a) provides: “A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.”

The issue of inconvenient forum was not raised by motion of a party, on the court’s own motion, or on the request of another court. It thus was not properly raised in the juvenile court and is not an issue before this court. Kristina’s reliance on *Clark v. Superior Court* (1977) 73 Cal.App.3d 298 is misplaced because in *Clark* the mother raised the issue of an inconvenient forum in the lower court.

## **II. Substantial Evidence that Children Were Adoptable\***

The juvenile court must select and implement a permanent plan for dependent children at the Welfare and Institutions Code section 366.26 hearing. “Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) “[C]onsideration of the child’s best

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\* See footnote on page 1, *ante*.

interests is inherent in the legislative procedure for selecting and implementing a permanent plan.” (*Id.* at p. 1165.)

Kristina contends that substantial evidence does not support the juvenile court’s finding of adoptability. Kristina asserts the record shows ample facts to indicate that S. and K. might not be adoptable as a sibling set, and only conclusory statements by the department of social services support the finding that they are adoptable. In particular, she points to the physical problems of S. as well as her low test scores. Kristina argues that the social worker’s report was too vague and speculative to support a finding by clear and convincing evidence that the girls would likely be adopted in a reasonable time. Kristina discounts the fact that the children were placed in a foster-adopt home because they had only been placed there a few days at the time of the hearing.

“On appeal, we view the evidence in the light most favorable to the trial court’s order, drawing every reasonable inference and resolving all conflicts in support of the judgment. [Citation.] An appellate court does not reweigh the evidence. [Citation.] Rather, we must determine whether there is substantial evidence from which a reasonable trier of fact could by clear and convincing evidence find a factual basis for the finding as to the child’s adoptability. [Citation.]” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) “The issue of adoptability requires the court to focus on the child, and whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citations.]” (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.)

Kristina relies on *In re Asia L.* (2003) 107 Cal.App.4th 498 to support her position. In *Asia L.* the appellate court found that the evidence was not substantial to support the department’s finding that Asia, James, and Joel were adoptable. The evidence was as follows: “In anticipation of the initial October 2001 permanency planning hearing, Foster submitted a report that indicated that although James suffered from asthma and early exposure to lead, he was a healthy child and that, while he appeared to be physically developing normally, he lacked appropriate socialization skills. At the time of that report,

James attended a regular first grade class, and his teacher reported that while he was a bright and energetic child, his behavior prevented him from accomplishing what he was capable of doing. 'He needs constant supervision and is often out of control in the classroom to the point that he may not be able to be maintained in the classroom.' James's therapist reported that James was a 'bright child who is highly responsive to positive attention' but that he was also 'extremely hyperactive and in need of medication; he is the most hyperactive child she has ever seen.' She said that 'James requires a great deal of limit setting and containment as he has a poor attention span and impulse control, has a low frustration tolerance, and makes abrupt changes.' In her report, Foster stated that 'James has a probability for adoption but it is difficult to place based on the fact that, at this time, there is no identified prospective parent.' She requested and was granted a 90-day continuance to further assess James's adoptability.

"Foster also prepared a report on Asia in anticipation of the October 2001 hearing. She indicated that while Asia suffers from enuresis, she was overall a healthy child and was on target developmentally. While the report states that Asia is a 'super bright child,' her teacher also reported that she has a problem with not listening, staying still, and stealing. Asia's therapist reported that she is hyperactive, steals, lies, hoards material items not food, aggravates other children, and pulls her braids out of her head when upset. The report states that the department 'believes an ideal home for Asia would be a specialized placement where she is the youngest child; where the parents are "experienced" and capable of dealing with and providing non-punitive structure to a hyperactive child; one where the primary parent stays home; and one that will advocate for, participate in, and follow-up on all physical, mental health, and school related appointments.' The report does not reach a conclusion regarding the likelihood of adoption and requests a 90-day continuance to further assess Asia's adoptability. The hearing was continued until January 2002.

"In a supplemental report prepared for the January 2002 hearing, Foster indicated that James was undergoing a full developmental/educational assessment and that he had

been taking Ritalin with mixed results. She also reported that Asia, while in therapy, was acting out confusion and distress in her play. Foster stated that the department ‘has determined that the children are adoptable but are in need of specialized placements’ and requested a continuance to enable them to review a number of interested families’ home studies. In preparation for the April 2002 hearing, Foster submitted an additional report, indicating that in the approximately two to three months since James and Asia were placed with a foster family agency in Stanislaus County, they have ‘continued to reciprocally connect with the foster parents and older foster brother’ and ‘[a]lthough James and Asia’s foster parents have indicated that they are willing to explore adoption of the children, it is too soon for them to make such a permanent and life changing decision.’ Regarding the likelihood of adoptability, Foster concludes: ‘Although there is no identified prospective adoptive parent at this time, Children and Family Services is confident that a prospective adoptive family can be located for James and Asia.’

“While the age and physical health of James and Asia weigh in favor of adoptability, their emotional and psychological development present a potential obstacle to adoption. The department recognized that James and Asia would require specialized placement--which at least initially was not available within Contra Costa County--yet the department failed to provide evidence of approved families willing to adopt children with the developmental problems faced by James and Asia. Moreover, unlike the situation in *In re Sarah M.* [(1994) 22 Cal.App.4th 1642] the foster parents’ willingness to explore the option of adopting James and Asia is too vague to be considered evidence that some family, if not this foster family, would be willing to adopt these children. [Citations.] Likewise, the social worker’s conclusion alone is insufficient to support a finding of adoptability. [Citation.] This evidence simply fails to demonstrate clearly and convincingly that there is a likelihood that Asia and James will be adopted within a reasonable time.

“The evidence regarding Joel’s adoptability is similarly weak. Foster prepared a report for Joel in preparation for the April 9, 2002 hearing. In it she described Joel as a

‘cute, smart, hyperactive’ two-and-a-half-year-old child. The report indicates that although Joel tested positive for drug exposure at birth and has asthma, he is generally healthy. He is developmentally on target and presents as a happy child although he has a temper when angered or does not get his way. Regarding the likelihood of adoption, the report concludes that the department is confident that an adoptive home can be located for Joel. Again, however, the department failed to provide evidence that there were approved families interested in adopting a child similar to Joel. Foster suggests that the department would consider re-placing Joel with his non-biological paternal grandmother if she got ‘back on her feet’ financially, and alternatively, that the current caretakers for James and Asia have expressed an interest in having Joel placed in their care. These suggestions, however, are too vague and speculative to amount to clear and convincing evidence that Joel is likely to be adopted within a reasonable time. [Citation.] Accordingly, the record does not support the finding of adoptability of any of the three children.” (*In re Asia L.*, *supra*, 99 Cal.App.4th at pp. 510-512.)

The facts here differ from those in *Asia L.* First, there are no physical, mental, or social impediments to adoptability regarding K. She is young, five years old. She is intelligent, active, cooperative, and has no behavioral problems.

Although S. has had some health problems, with decaying teeth and a urinary problem, both are correctable with routine procedures with no long-lasting effects. S. does have developmental delays. Although she is delayed in her development and may suffer life long problems, she has shown steady progress, her behavior in class is excellent, she is friendly, polite, helpful, and well-adjusted. She does not suffer from any form of mental illness. Thus it appears that despite her developmental delays she could assimilate well into a family. We also note that in their foster care placements neither S. nor K. exhibited any serious behavioral problems.

The most important factor differentiating K. and S. from the children in *Asia L.* is that they have been placed with a foster-adopt family wishing to adopt them. The family is

aware of S.’s problems. “Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

Although S. has experienced some problems, her problems do not rise to the level of excluding her from the class of children that are generally adoptable. (Cf. *In re Carl S.* (2005) 128 Cal.App.4th 1051 [Carl was eight years old but had the emotional maturity of an eight-month-old child. He had cerebral palsy, severe quadriplegia, a seizure disorder, and an uncontrolled and severe psychomotor delay. Carl will always require total care.].)

There was substantial evidence that K. and S. were adoptable.

### **III. Failure to Receive Information from Children Regarding Adoption\***

At a Welfare and Institutions Code section 366.26 hearing the court “shall consider the wishes of the child.” (Welf. & Inst. Code, § 366.26, subd. (h).) “[T]he evidence need not be in the form of direct testimony in court or chambers; it can be found in court reports prepared for the hearing.” (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 820.) “[T]he court must only consider the child’s wishes to the extent those wishes are ascertainable. [Citation.] A child may not be able to understand the concept of adoption. [Citation.]” (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 201.)

We begin by noting that Kristina raised no issue below that the juvenile court failed to obtain evidence regarding the wishes of the children. She has thus waived it here. (*In re Amanda D.*, *supra*, 55 Cal.App.4th at pp. 819-820.) Additionally, the reports contained evidence that the girls enjoyed their visits with Kristina and on their last visit with her they

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\* See footnote on page 1, *ante*.

cried uncontrollably for 30 minutes after the visit was over. In addition, after Kristina would call them and say she was going to come and get them, the girls would sit by the window waiting for her to come and be upset when she did not arrive. These children are young and it is not clear that they would understand the concept of adoption; the evidence was clear that they missed their mother, even after they had not seen her for several months. Thus the report contained sufficient evidence from which the court could glean what the wishes of the children would have been. Error in failing to explicitly set forth their wishes was waived, and in any event was harmless.

#### **IV. Visitation Exception to Termination of Parental Rights.\***

Once reunification services are ordered terminated, the focus shifts to the needs of the children for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) A Welfare and Institutions Code section 366.26 hearing is designed to protect children's compelling rights to have a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. (*In re Marilyn H.*, *supra*, at p. 306.) If, as in this case, a child is likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances (Welf. & Inst. Code, § 366.26 (c)(1)) provides a compelling reason for finding that termination of parental rights would be detrimental to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534, *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

“The specified statutory circumstances--actually, *exceptions* to the general rule that the court must choose adoption where possible--‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ (*In re Jasmine D.* [2000] 78 Cal.App.4th [1339,] 1348.) At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ (*Cynthia D. v. Superior Court* [(1993)] 5 Cal.4th [242],

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\* See footnote on page 1, *ante*.

256.) The statutory exceptions merely permit the court, in *exceptional circumstances* (*In re Jasmine D.*, *supra*, at pp. 1348-1349) to choose an option other than the norm, which remains adoption.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

Kristina claims the court erred in setting adoption as the permanent plan because the evidence established she maintained regular visitation with the girls throughout the dependency and they had a beneficial relationship with her such that the girls would suffer detriment if the relationship was terminated. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(A).) However, proof that the girls had a significant emotional relationship with Kristina did not compel the juvenile court to find that termination would be detrimental to the girls. Kristina has the burden of demonstrating that the termination of parental rights would be detrimental to the girls. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

“[T]he exception in [Welfare and Institutions Code] section 366.26, subdivision (c)(1)(A), requires that the parent-child relationship promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: ‘balance[] the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

Kristina maintained face-to-face contact with the girls for seven weeks and then she moved to Nebraska. She maintained telephone contact with the girls after she left, and returned in April of 2005 for two visits. The girls were clearly attached to Kristina and cried after she left. Although it is clear that the girls have an emotional attachment to Kristina, they are young and they have been happy and well-adjusted in their foster home placements. The physical absence of Kristina from their lives for several months did not



have any ascertainable adverse effects on the girls. Kristina has failed to show that a termination of her relationship with K. and S. would “greatly harm” them or outweigh their need for permanency and stability. (*Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

**DISPOSITION**

The judgment is affirmed.

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VARTABEDIAN, Acting P. J.

WE CONCUR:

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CORNELL, J.

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GOMES, J.